

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)	In Proceedings
)	Under Chapter 7
CASEYVILLE INVESTMENTS, INC.,)	
)	No. BK 90-30413
Debtor(s).)	
)	
CASEYVILLE INVESTMENTS, INC.,)	Adv. No. 91-3003
)	
Plaintiff,)	
)	
vs.)	
)	
THE STATE OF ARKANSAS, et al.,)	
)	
Defendants.)	

OPINION

Caseyville Investments, Inc. ("debtor") filed a Chapter 7 bankruptcy petition on May 16, 1990. On February 13, 1991, debtor filed an adversarial complaint, pursuant to 11 U.S.C. §505,¹ seeking a determination by this Court as to the amount of road use and/or motor fuel tax owed to various states. Debtor seeks both monetary and declaratory relief. Specifically, with regard to the State of Georgia, debtor asks the Court to determine that debtor paid an excess of \$376.73 in fuel taxes, and to order the State of Georgia to repay that amount to the bankruptcy estate. With regard to the State of Nebraska, debtor alleges that it does not owe the \$331.96 tax assessed by Nebraska on the basis that it did not operate in that state during the

¹Section 505 provides that "the court may determine the amount or legality of any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction." 11 U.S.C. §505(a).

period for which the tax was assessed. Nebraska filed a claim with Western Surety Company, the underwriter of bonds guaranteeing payment of the taxes in question, and has recovered the \$331.96 it alleges debtor owes. With regard to the State of Tennessee, debtor asks the Court to determine that its total liability to Tennessee for highway fuel taxes is \$57.28. Tennessee has likewise demanded payment from Western Surety Company, but apparently has not yet been paid.

The Tennessee Department of Revenue and the Georgia Department of Revenue have each filed a motion to dismiss debtor's complaint, contending that state governments and their departments are entitled to sovereign immunity pursuant to the eleventh amendment of the United States Constitution. The same issue has been raised in a Special Appearance filed by the State of Nebraska. The question this Court must resolve, therefore, is whether the States of Georgia, Nebraska and Tennessee are immune from a suit that seeks both monetary and declaratory relief.

Section 106 of the Bankruptcy Code governs the question of sovereign immunity and provides as follows:

(a) A governmental unit is deemed to have waived sovereign immunity with respect to any claim against such governmental unit that is property of the estate and that arose out of the same transaction or occurrence out of which such governmental unit's claim arose.

(b) There shall be offset against an allowed claim or interest of a governmental unit any claim against such governmental unit that is property of the estate.

(c) Except as provided in subsections (a) and

(b) of this section and notwithstanding any assertion of sovereign immunity--

(1) a provision of this title that contains "creditor", "entity", or "governmental unit" applies to governmental units; and

(2) a determination by the court of an issue arising under such a provision binds governmental units.

11 U.S.C. §106. The majority view is that subsections (a) and (b) of section 106 condition the waiver of sovereign immunity upon the filing of a proof of claim. 2 Collier on Bankruptcy 41106.02 at 106-5 (15th ed. 1991).² Likewise, in Hoffman v. Connecticut Dept. of Income Maintenance, 492 U.S. 96, 109 S.Ct. 2818, 106 L.Ed.2d 76 (1989), the Supreme Court held that section 106(c) does not permit monetary recovery from a state that has not filed a proof of claim. Id. at 102.

In Hoffman, the bankruptcy trustee filed a "turnover" complaint pursuant to section 542(b) of the Bankruptcy Code, as well as a complaint to avoid a preferential transfer pursuant to section 547(b) of the Code. Each complaint was filed against the State of Connecticut and sought monetary relief. The Court initially noted that neither section 106(a) nor section 106(b) provided a basis for the trustee's actions since the State of Connecticut had not filed a proof of claim. Id. at 101. In explaining why section 106(c) likewise precluded the trustee from obtaining monetary relief from the State of Connecticut,

²This is true despite the fact that the section, as finally enacted, "omitted language in a prior version of section 106(a) and (b) expressly requiring that a governmental unit must file a proof of claim before a waiver is deemed to have occurred." 2 Collier on Bankruptcy ¶106.02 at 106-5.

the Court reasoned:

The language of § 106(c)(2) is more indicative of declaratory and injunctive relief than of monetary recovery. The clause echoes the wording of sections of the Code such as § 505, which provides that "the court may determine the amount or legality of any tax," 11 U.S.C. § 505(a)(1), a determination of an issue that obviously should bind the governmental unit but that does not require a monetary recovery from a State. We therefore construe § 106(c) as not authorizing monetary recovery from the States. Under this construction of § 106(c), a State that files no proof of claim would be bound, like other creditors, by discharge of debts in bankruptcy, including unpaid taxes, but would not be subjected to monetary recovery.

Id. at 102 (citations omitted).

In the present case, neither Georgia, Nebraska nor Tennessee filed a proof of claim. Therefore, as debtor readily concedes, the Supreme Court's decision in Hoffman bars debtor from obtaining monetary relief from those states. See Debtor's Brief in Response to Motion to Dismiss at p. 4. It is equally clear, however, that debtor is entitled to declaratory relief--that is, the doctrine of sovereign immunity does not prohibit this Court from determining the amount of taxes owed to the States of Georgia, Nebraska and Tennessee. Not only does section 505 of the Bankruptcy Code specifically provide that "the court may determine the amount or legality of any tax," 11 U.S.C. §505(a), but the Supreme Court in Hoffman expressly stated that section 106(c)(2) "is more indicative of declaratory and injunctive relief than of monetary recovery." Hoffman v. Connecticut Dept. of Income Maintenance, 492 U.S. at 102 (emphasis added). See also In re Brooks Fashion Stores, Inc., 124 B.R. 436, 442 (Bankr. S.D.N.Y. 1991) (eleventh

amendment precludes a debtor's affirmative monetary recovery against a state agency that has not filed a proof of claim, but does not prevent a bankruptcy court from discharging a debt owed to a state agency, even in the absence of the state agency having filed a proof of claim); In re Sharon Steel Corp., 119 B.R. 502 (Bankr. W.D. Pa. 1990) (Hoffman decision establishes that a bankruptcy court can determine the amount or legality of any tax). In sum, under section 106(c) and the Supreme Court's decision in Hoffman, this Court has jurisdiction to determine the amount and legality of debtor's tax obligations to the defendant states as requested in debtor's complaint.

Accordingly, IT IS ORDERED that the motions to dismiss filed by the States of Georgia and Tennessee are GRANTED IN PART (to the extent the complaint seeks monetary relief) and DENIED IN PART (to the extent the complaint seeks declaratory relief). The State of Nebraska's request, raised in a Special Appearance, to dismiss debtor's complaint for monetary relief is GRANTED. Nebraska's request to dismiss debtor's complaint for declaratory relief is DENIED.

/s/ Kenneth J. Meyers
U.S. BANKRUPTCY JUDGE

ENTERED: June 10, 1991